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## OLR Bill Analysis

HB 6599

### *Emergency Certification*

#### **AN ACT ESTABLISHING THE SANDY HOOK WORKERS ASSISTANCE PROGRAM AND FUND, CLARIFYING THE CALCULATION OF SURVIVOR BENEFITS, AND AUTHORIZING A WAIVER OF THE STATE-WIDE MASTERY EXAMINATION REQUIREMENT FOR CERTAIN NEWTOWN STUDENTS.**

#### **SUMMARY:**

This bill establishes the Sandy Hook Workers Assistance Program and Fund to provide financial assistance to certain people who suffered a mental or emotional impairment related to the events at Sandy Hook Elementary School, its grounds, and the immediate vicinity, including the Sandy Hook Volunteer Fire Department, between 8 a.m. and midnight on December 14, 2012, and the Sandy Hook Elementary School and its grounds on December 15, 2012 (“the affected area”). Eligible claimants can receive financial assistance for uncompensated leave from their employment if the mental or emotional impairment caused a total or partial disability preventing them from working. They can also receive payments for related medical expenses that are not covered by their own health insurance.

The bill makes the Office of Victim Services (OVS) the program’s administrator and establishes a claims process and documentation requirements for OVS to determine benefit eligibility and amounts for individual claimants. OVS must begin accepting applications for benefits by April 1, 2013, and benefit payments will end on August 31, 2015. The bill limits each claimant to a total of 52 weeks of benefits. It also establishes a process for claimants to appeal initial decisions on their claims.

It establishes the Sandy Hook Workers Assistance Fund to pay the program’s benefits and administrative and operating costs. It makes no appropriations for the fund, but allows it to accept charitable

donations from public and private sources. All benefits paid from the fund must be within the available funds.

The bill does not (1) alter or affect any existing employment contracts, (2) grant claimants any additional employment rights, or (3) affect any claims or lawsuits by claimants. The state is not liable for any decisions regarding a claimant's eligibility to receive benefits.

The bill also makes changes to eligibility calculations for survivors' benefits in the Teachers' Retirement System and allows exceptions from Connecticut Mastery Test (CMT) requirements for certain Newtown students.

EFFECTIVE DATE: Upon passage

## **ELIGIBILITY**

The bill establishes criteria for three groups of people to qualify for financial assistance: (1) those whose employment or volunteer status caused them to be at the affected area ("direct participants"); (2) those who were scheduled, for employment or volunteer purposes, to be at the affected area ("scheduled participants"), and (3) those who performed duties required by events at the affected area ("indirect participants"). Eligibility within each group depends on (1) a claimant's relation to the Sandy Hook incident, (2) employment or volunteer position, and (3) mental or emotional impairment cause. Table 1. shows the eligibility criteria for each group.

**Table 1: Eligibility Criteria**

	<b>Relation to Events</b>	<b>Covered Jobs</b>	<b>Cause of Impairment</b>
<b>Direct Participants</b>	Employment or volunteer status required their presence in the affected area	<ul style="list-style-type: none"> <li>• Professional police officer, professional firefighter, state police officer;</li> <li>• Volunteer firefighter or volunteer police officer, including municipally approved special and auxiliary positions;</li> <li>• Volunteer auxiliary member of a police or fire department;</li> <li>• Licensed medical professional such as a physician, physician assistant,</li> </ul>	Perception of and proximity to the affected area

		nurse, emergency medical technician, or paramedic; • Teacher or paraprofessional employed by the town of Newtown or the town's board of education; • Administrative or service employee of Sandy Hook Elementary School, such as a secretary, food service provider, or janitor; • Licensed therapist or counselor employed by a state agency or licensed by the state; • Response coordinator employed by the Department of Public Health or the Department of Emergency Services and Public Protection (DESPP)	
<b>Scheduled Participants</b>	Was scheduled to be in the affected area by their employment or volunteer status	Same as direct participants	Absence from the affected area
<b>Indirect Participants</b>	Performed duties required by events in the affected area	• Licensed medical examiner, forensic technician, laboratory assistant, principal physician, special investigator, or forensic science examiner employed by or working at the direction of the chief medical examiner or DESPP; • Emergency service dispatcher; • Department of Mental Health and Addiction Services employee providing mental health services.	Performing duties required by events in the affected area

## CLAIM PROCESS

The bill makes OVS the program's administrator and empowers it to determine claims. OVS can (1) summon and examine witnesses under oath to obtain information relevant to a claimant's eligibility; (2) require production of written evidence, including books, records, vouchers, or other documents related to any issue OVS deems proper; and (3) take affidavits and depositions.

### *Initial Claims*

OVS must begin taking applications for assistance by April 1, 2013, and claimants must file a notice of claim with OVS by June 30, 2014. No assistance will be paid to a claimant after August 31, 2015. The claim must include a certificate from a state licensed medical

professional providing mental health services:

1. stating that the claimant has a mental or emotional impairment  
(a) causing the claimant's partial or total disability preventing the claimant from performing his or her employment or volunteer duties or (b) requiring medical or surgical services, which can include medical rehabilitation services, mental health therapy, and prescription drugs; and
2. detailing how the claimant meets the previously described eligibility requirements as a direct participant, scheduled participant, or indirect participant.

If the claim is for assistance to cover uncompensated leave, the claimant must also include proof of his or her weekly earnings over the year preceding the impairment. The claimant must also provide any additional information requested or required by OVS, whether or not it would be admissible in a court of law. If a claimant has a pending Workers' Compensation claim, it will not affect a claim for these benefits.

The bill requires OVS to promptly evaluate each notice of claim and, if approved, determine the weekly amount and duration of any approved claims. OVS must provide a written decision to the claimant within 10 days of receiving the claim or 10 days after receiving any additionally requested information from the claimant. It must direct the state comptroller and state treasurer to pay the assistance in the amount and for the duration it approved.

### ***Follow Up Documentation***

Starting after the first full month of receiving benefits, the bill requires claimants to monthly submit (1) a certificate from a licensed medical professional providing mental health services detailing the claimant's continued inability to work and (2) documentation for any uncompensated medical expenses, including medical rehabilitation services, mental health therapy services, and prescription drugs. After receiving the monthly submissions, OVS can adjust the claimant's

assistance at its discretion.

### ***Appeals***

A claimant can request a review of an initial claim decision within 20 days of the decision's mailing. The bill does not provide an appeal mechanism for claimants to contest the adjustments OVS makes after receiving monthly follow-up documents. Within three days of receiving the request, OVS must assign the case to a victim compensation commissioner and provide all related documentation. The commissioner must hold a hearing within 20 days of receiving the assignment and issue a decision with a short statement of findings within 20 days of the hearing. The decision must be based on a de novo review of all relevant evidence, which the commissioner can consider regardless of whether it would be admissible in a court of law. Under the bill, the claimant cannot appeal a case beyond a victim compensation commissioner. Commissioners will be paid up to \$125 per day and must agree to review cases.

### **BENEFITS**

The bill allows claimants to receive (1) financial assistance for uncompensated leave from their employment, regardless of whether a claimant exhausted his or her compensated leave or chose to take uncompensated leave from his or her employment, and (2) related medical expenses not covered by the claimant's health insurance. It allows retroactive assistance payments to cover time lost and medical expenses prior to filing a claim, but a claimant cannot receive assistance for more than 52 weeks, including retroactive payments. Assistance payments cannot exceed the fund's solvency. Under the bill, assistance payments are not considered part of the claimant's income for state tax purposes. If the program has insufficient funds to provide full benefits, OVS must provide prorated benefits at its discretion.

### ***Disability Assistance***

Under the bill, if a claimant's mental or emotional impairment makes him or her totally unable to work, his or her weekly financial assistance is 75% of his or her net (after tax and FICA deductions)

average weekly earnings over the 52 weeks preceding the impairment. If a claimant's mental or emotional impairment makes him or her partially unable to work, or requires time away from work for medical treatment, the claimant's weekly assistance is 75% of the difference between (1) the claimant's net average weekly earnings for the year before the impairment and (2) what the claimant is able to earn after the impairment. Neither payment can exceed the average weekly earnings of all workers in the state, currently \$1,172. These are the same benefit rates and limits that exist under the state's workers' compensation law.

If a claimant who qualifies for disability assistance as a volunteer makes less than the state's average production wage (currently \$1,001 per week) in his or her regular job, the bill requires the volunteer's benefits to be based on the state's average production wage. This method is also used under current law to determine workers' compensation benefits for volunteer firefighters. The bill also gives OVS discretion, when calculating a claimant's benefits, to consider special circumstances that may have affected the claimant's earnings over the previous year, such as maternity leave, disability, or unemployment, whether voluntary or involuntary.

If a claimant's union contract entitles the claimant to disability benefits greater than those otherwise allowed under the bill, the bill requires OVS to pay additional benefits to meet the benefits required by the union contract.

### ***Medical Benefits***

The bill allows an eligible claimant to receive weekly assistance for the cost of any medical services that were not covered by the claimant's health benefits, including deductibles and copayments, if, in the opinion of a state licensed medical professional providing mental health services, the claimant's mental or emotional impairment requires the services, including medical rehabilitation services, mental health therapy services, and prescription drugs.

### **THE FUND**

The bill establishes the Sandy Hook Workers Assistance Fund and requires the state comptroller and treasurer to pay Sandy Hook Assistance Program assistance payments, operating costs, and expenses at OVS's discretion. Up to 5% of the fund can be used for administrative or other costs in a calendar year, including hiring necessary employees and performing public outreach and education about the program.

The bill does not appropriate any state funding, but allows the treasurer to accept gifts, donations, and grants from public and private sources for the fund. Money in the fund must be accounted for separately and apart from all other state moneys, and the state's full faith and credit is pledged for its safekeeping. Money in the fund must be credited with interest by the treasurer under applicable law.

### ***Reports***

Starting April 1, 2013, the bill requires the treasurer to submit monthly reports on the fund's value to OVS. The reports cannot identify anyone who has donated to the fund. OVS can also request a report from the treasurer at any time.

Starting April 1, 2013, the bill requires OVS to submit quarterly reports on the fund's financial condition to the General Assembly. The report must include (1) an estimate of the fund's value, (2) the scheduled payments' effect on the fund's value, (3) estimated monthly administrative and operational costs for the fund and program, and (4) any recommendations for legislative action to improve the program or fund's operation or administration. By May 1, 2015, the report must include recommendations on how to distribute any money remaining in the fund after the program's termination to other charities that will best fulfill the program's purposes.

### **TEACHERS' RETIREMENT SYSTEM**

The bill makes a change to the teachers' retirement rules that applies only to teachers who died from injuries received on the job during December 2012. It requires that a spouse, dependent, or other survivor's eligibility for retirement benefits under the Teachers'

Retirement System be calculated as if the deceased member teacher had completed the 2012-2013 school year, if the teacher (1) died between December 1, 2012 and December 31, 2012, due to injuries received while acting within the scope of his or her employment, and not illness or natural causes, and (2) was not receiving retirement benefits when he or she died.

**CMT**

Upon the Newtown Board of Education's request, the bill requires the State Board of Education (SBE) to exempt Newtown public schools from the state's mastery test requirement for the 2012-2013 school year. SBE must exempt Newtown from the requirement to give the mastery tests in grades three through eight. Under the bill, SBE does not have to collect and track mastery test performance data for Newtown public school students during the 2012-2013 school year. The bill allows the state board to amend or suspend any policies or guidelines as necessary to implement these exemptions.